

ZONING BOARD OF APPEALS IPSWICH, MASSACHUSETTS

Meeting Minutes
June 16, 2016

Pursuant to a written notice posted by the Town Clerk and delivered to all Board members; the Ipswich Zoning Board of Appeals held a meeting on Thursday June 16, 2016 at 7:30 p.m. in room A at the Town Hall. Members attending were Chairman Robert Gambale, Roger LeBlanc, Ben Fierro and Lewis Vlahos. Also, Associate Robert Tragert and Becky Gayton and Administrative Assistant Marie Rodgers. Bill Page was not present, with prior notice to the Chair.

Citizen Queries: None.

Public Hearings:

45 Boxford Road; Map 36 lot 8. **Carlene White** requests an **Appeal of the Building Inspector's Decision** pursuant to XI.G of the zoning bylaw denying a building permit to construct a 20x30-foot barn, to be used as an infirmary for the tenant's commercial kennel. The appeal seeks to overturn the Building Inspector's allegation of a violation of Section V table of Use Regulations, footnote 29, that all dogs in the kennel were not owned by the owner/lessee of the property. Chairman Gambale opened the public hearing at 7:35 p.m.

Building Inspector Tony Torra was present. The Petitioner was present represented by her Attorney Donald Greenough. Attorney Rich Kallman was present representing Partridgeberry Place Association, Inc.

A signed petition was submitted to the Board from residents opposing the expansion of the operations of the Service Dog Project (SDP) and requesting the ZBA conduct a site visit. (hereby incorporated by reference)

Attorney Greenough spoke to the events leading up to the appeal, referencing the Building Inspector's letter dated May 12, 2016; he submitted a document from the Town Clerk listing Kennels in Ipswich in 2016. The records of the Town Clerk indicated that all the dogs in the kennel are owned by the tenant. He stated that footnote 29 does not limit the number of dogs that may be kept in a kennel by the owner/lessee.

The Service Dog Project, Inc. ("SDP") is a not-for-profit corporation which began in 2003 to breed, train and raise Great Danes as service dogs and donates them to worthy applicants; kennel is a permitted by right in the Protective Zoning Bylaw in the RRA District.

The Board and the Building Inspector, Tony Torra discussed the building permit process; the online application for the proposed structure was not designed to provide information regarding the kennel use; allegation of a violation was based on the number of dogs on the property and the registration of the dogs by a corporation; ownership of dogs was not asked on the building permit. The Building Inspector is of the opinion that the proposed barn and associated parking will significantly expand the operations and dogs must be owned and registered in the owner's name.

Discussion regarding footnote 29 in the Table of Use Regulations in the Zoning Bylaw; it does not limit the number of dogs that may be kept in a kennel by the owner/lessee; Attorney Greenough stated that footnote 29 does not exclude a corporation or other business entity from being an owner or lessee.

Discussion was held regarding the lot size of 37 Boxford Road and 45 Boxford Road; both are over five acres. Chairman Gambale spoke to his observations on his site visit; he then asked the Building Inspector about filing procedures of this building permit. The plan submitted with the application was for a foundation. Mr. Torra felt the ownership of dogs by a corporation was not the intent of the bylaw. Proposed use was discussed. There was no floor plan and was unclear the proposed use for a 20' x 30' structure described as a garage, then barn building.

Attorney Greenough pointed out that the 'use' was not relevant, the proposed structure is within dimensional requirements, meets all the setbacks and there is no limit on the number of dogs they could have. A separate infirmary is needed and only now could they financially handle it.

Attorney Kallman representing the home owners at Partridgeberry Place acknowledged the good work by SDP. He spoke to coexisting for the past thirteen years, however recently, increased activity and change in the nature of operations is beyond a kennel and has affected the homeowners. He related a recent news article in the Salem News about rescued donkeys at the property and the planned weekend events making it more than just a kennel. The proposed building called an infirmary for veterinary use would need a special permit from the ZBA for a veterinarian to practice; he opined that it is clearly an expansion of use and affecting the neighboring residence. He urged the Board on visit the site and decided if, it is just a kennel; a lot has changed in the past one- two years, it goes beyond the realm of a kennel. The infirmary takes it to another level and could require a SP if it becomes a veterinary practice.

Chair questioned the scope of a working farm operating under agriculture use. Mr. LeBlanc asked if there had been formal complaints, Attorney Kallman responded that home owners at Partridgeberry Place have been good neighbors and recognized the good service, but the nature of the operation has changed and neighbors have to live with it. Attorney Kallman reiterated, the addition of the infirmary is a change in use and needs a SP from ZBA. He opined that it is a successful operation and will continue into the future.

Attorney Greenough explained it has been run as a farm since 1979, at one time with 150 different animals; kennel is a permitted use, allowed in the RRA District.

Chairman related to the Town's Right to Farm Bylaw, the letter from the ACO and recourse for complaints of barking dogs; the town has no bylaw regulating noise.

Dr. George Myers, Maple St. Danvers, MA spoke to his work for the Petitioner for twenty years as veterinarian; he does not make house calls, 99.9% of his work is done in the hospital, except occasionally for a litter. He has been urging the Petitioner to build an isolation room; puppies get sick all the time and there is a need for a place that can be sterilized with the intention to isolate sick dogs. He indicated that there has been no big change in the number of dogs in years, except for the ebb and flow of puppies.

In response to the Chairman, Dr. Myers said 99% of the care is given in his office; occasionally he goes there if, it's a very old dog.

Mr. Tragert asked how Mr. Myers envisioned the infirmary. Dr. Myers replied the infirmary would isolate a number of dogs with a run for a certain distance; you cannot cage this breed. Space is needed to stock medicines and food. He opined that the Petitioner would need more room than the proposed building.

Abutters Ronald Eydenburg of 10 Partridgeberry Place, John Tracy of 30 Partridgeberry Place, Jeff Mazer of 28 Partridgeberry Place, Keith Emery of 10 Partridgeberry Place, Paul Fortin of 22 Partridgeberry Place, Ben Alpena from Sommerville, MA, Sue??, 496 Bennington Street, East Boston and Jean Curran of 16 Partridgeberry Place all raised various concerns including the increasing activity, barking noises, significant expansion to the property and suggested a site visit.

In response to the Chairman query regarding the right-of-way; Attorney Greenough said the ROW has existed for 80 years and continued to describe how it provided emergency access to the barn. The only slab is used for the outdoor run; parking is all dirt. Parking lot expansion does not require approval; there are no plans have the parking area paved.

Chair reviewed procedures for building permits review and signing off by the Board of Health and Conservation Commission. He referenced the letter from the ACO and best management practices conducted on the farm.

Mr. Fierro spoke to the zoning bylaw and keeping of farm animals as a matter of right on five acres or more. Chairman explained the process of changing the zoning bylaw.

Paul Morgani of 40 Boxford Road referenced photo #3 as his backyard, with the trees all cut down; his daughter loved to go to the farm, he said thank you, and continued to say that property values have dropped, now all woods are cut down, dogs bark 24/7, it affects him and his neighbors; he shares a right-of-way for the past 30-40 years, now there's vehicle traffic going by; he asked "who are these people?"

Attorney Greenough said the ROW is without restrictions, they (45 Boxford Road) have a right to use it.

In response to the Chairman's query there were no other abutters or other organizations? Additionally, there was no response from the Ipswich Conservation Commission; Commonwealth of Massachusetts Department of Management; Commonwealth of Massachusetts Department Willowdale State Forest. Chair then noted removal of trees, vegetation in the wetlands is the jurisdiction of the Conservation Commission.

Attorney Kallman made closing statements and suggested the neighbors and petitioner work together; he urged the Board to conduct a site visit. Chair reiterated and urged all parties to work things out and cooperation.

The Board discussed process and whether a site visit was necessary.

MOTION:

Mr. Fierro moved to close the public hearing, Mr. Vlahos seconded, the motion passed unanimously.

The Board decided a site visit was not necessary; the size of the proposed structure less than 750 square feet, below the threshold that gives the Board jurisdiction to regulate it. The statement that the structure would be a veterinary hospital is not supported by any evidence; in the future, if that's the case, the regulations are enforced by the Building Inspector. The bylaw allows the keeping of barn animals, including donkeys; both parcels are over five acres. Chair opined that the Building Inspector did the right thing with the information he had. Mr. Tragert agreed, saying it was outside the norm; more information was collected through a hearing.

MOTION:

Mr. Fierro moved to grant the Petitioner's request to over turn the decision of the Building Inspector denying the building permit application for the construction of the additional kennel, in a letter dated 5/12/16, to be part of the decision. Mr. Tragert seconded, the motion passed unanimously with a roll call vote; Fierro, yes; Page, yes; Vlahos, yes; Gambale, yes; and Tragert, yes.

In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session follow: Petition application Letter of the Building Inspector, dated May 12, 2016; Application for Building Permit, dated April 5, 2016; Commercial Lease, dated October 14, 2014, between Carlene White (landlord) and Service Dog Project, Inc. (tenant), for 37 and 45 Boxford Road associated documentation filed 5.24.2016; emails dated 6.13.2016 and photo from property line 49 Boxford road, Tobins and Morgans; letter dated 6.13.2016 from George and Roberta Tobin, 53 Boxford Road; email dated 6.15.2016 from Attorney Rich Kallman and doc titled EXPANSION OF SERVICE DOG PROJECT no date; email and letter dated 6.15.2016 from Elaina Stergiades 55 Boxford Road; email dated 6.16.2016 from Kitty Bartholomew containing a link to a u-tube video for the Service Dog Project; email dated 6/16/2016 and 3-page document with emails and letters written to Carlene White from SDP Great Dane recipients; Town Clerk's List of Kennel Registrations for 2016.list from the Town Clerk listing all the kennel in town for 2016.

Approval of Minutes

Mr. Fierro moved to approve minutes from April and May meetings with minor edits; Mr. Vlahos seconded, the motion passed unanimously.

Adjourn

Mr. Tragert moved to adjourn at 9:55 p.m. Mr. Vlahos seconded, the motion passed unanimously.

Respectfully submitted,
Marie Rodgers

These minutes were approved by the Board on July 21, 2016